United Nations A/C.6/65/SR.14

General Assembly
Sixty-fifth session

Official Records

Distr.: General
17 November 2010

Original: English

Sixth Committee

Summary record of the 14th meeting
Held at Headquarters, New York, on Monday, 18 October 2010, at 3 p.m.

Chairperson: Ms. Picco (Monaco)

Contents

Agenda item 84: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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The meeting was called to order at 3 p.m.

Agenda item 84: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization *(continued)* (A/65/33, A/65/214 and A/65/217)

1. **Mr. Janssens de Bisthoven** (Belgium), speaking on behalf of the European Union, the candidate countries Croatia and the former Yugoslav Republic of Macedonia, the countries of the stabilization and association process and potential candidates Albania, Bosnia and Herzegovina and Montenegro and the European Free Trade Association countries Liechtenstein and Norway, members of the European Economic Area, as well as the Republic of Moldova and Georgia, said that the European Union continued firmly to believe that sanctions remained an important instrument, under the Charter of the United Nations, for the maintenance and restoration of international peace and security; the practice of the Security Council in recent years demonstrated that sanctions could be designed in such a way as to minimize the possibility of adverse consequences for third countries and their populations. Since, as was noted in the report of the Secretary-General (A/65/217), no Member State had approached the sanctions committees or appealed to the United Nations for relief from the adverse effects of sanctions, and no specific action had been taken by the General Assembly, the Economic and Social Council or the Secretariat, the European Union believed that the study by the Special Committee of the question of assistance to third States affected by the application of sanctions was no longer relevant and should be removed from its agenda.

2. The European Union welcomed the Secretariat's efforts to reduce the backlog in the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and also to strengthen cooperation with academic institutions and make the publications accessible on the Internet. The European Union encouraged Member States to make contributions to the trust funds established for that purpose.

3. The European Union continued strongly to advocate the implementation of the decision adopted in 2006 on reforming the working methods of the Special Committee; it noted with concern that in 2010, far more time than was needed had been allotted to meetings of that Committee, which was not an efficient use of resources. It had reservations regarding the inclusion in the Special Committee's agenda of any new topic, given the number of items which had not yet been concluded. The Special Committee should focus on issues which had a concrete impact on the work of the Organization, and on which it could provide added value. Topics which had been discussed for many years without any concrete outcome should either be taken off the agenda or reviewed at longer intervals. The European Union supported the proposal that the Special Committee be convened every two years, and reiterated its proposal that the duration of the Special Committee's sessions should be significantly reduced.

4. **Mr. Al Habib** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that the Movement continued to attach great importance to the work of the Special Committee, which should play a key role in the current reform process of the United Nations. That process must include the democratization of the principal organs and respect for the role and authority of the General Assembly, as the chief deliberative and policymaking organ of the United Nations, including on questions related to international peace and security. The Non-Aligned Movement reiterated its concern about the continuing encroachment by the Security Council on the functions and powers of the General Assembly and on those of the Economic and Social Council by addressing issues which fell within the competence of those organs. The reform of the Organization must be carried out in accordance with the principles and procedures established by the Charter of the United Nations. The Special Committee should continue to study the legal aspects of the implementation of Chapter IV of the Charter, particularly Articles 10 to 14 on the functions and powers of the General Assembly.

5. The Non-Aligned Movement believed that the imposition of sanctions should be considered only as a last resort and only when there was a threat to international peace and security or an act of aggression as defined in the Charter. Sanctions must not be applied as a preventive measure or as a means of punishment or of exacting retribution. They were blunt instruments, the use of which raised fundamental ethical questions of whether sufferings inflicted on vulnerable groups in the target country were a legitimate means of exerting political pressure. Their objectives should be clearly defined and based on

tenable legal grounds they should have a specific time frame and be subject to periodic review, and they should be lifted as soon as the objectives were achieved. The Security Council should use the annex to General Assembly resolution 64/115 as a reference to guide its future work. It was important for the Special Committee to consider other aspects of sanctions, including the issue of compensation.

6. The Non-Aligned Movement noted that despite the progress made in reducing backlogs on all other volumes, no progress had been made on volume III of the *Repertory*; it hoped that that situation would be remedied.

7. **Ms. Quezada** (Chile), speaking on behalf of the Rio Group, said that the Group reiterated its view that full implementation of the Special Committee's mandate depended on the political will of Member States and the optimization of its methods of work. Member States must therefore strive to formulate a solid thematic agenda, comprising existing and new items, that would ensure optimal use of the resources assigned to that Committee.

8. The Rio Group reaffirmed the importance of peaceful means for the settlement of disputes and reiterated its firm conviction that in order to be effective, sanctions regimes must be legitimate. The annex to General Assembly resolution 64/115 was an important document which should be used by the relevant bodies of the United Nations. It was also important for the Special Committee to continue its consideration of all items related to the maintenance of international peace and security in order to strengthen the role of the United Nations.

9. According to the Secretary-General's report (A/65/217), no Member State had approached the sanctions committees in the period under review with regard to special economic problems arising from the implementation of sanctions; in nearly every case the Security Council had decided to make exceptions and authorize access to frozen funds; and the General Assembly and the Economic and Social Council, as well as the Secretariat, were continuing to perform their roles in respect of assistance to third States affected by the application of sanctions.

10. The Rio Group recognized the work done by the Secretariat in updating the *Repertory* and the *Repertoire* and in incorporating the volumes on the United Nations website, but urged that volume III of the *Repertory* should be completed as soon as possible. It commended Member States which had contributed to the voluntary fund.

11. The Rio Group believed that, in accordance with its mandate, the Special Committee had a key role to play in the reform process of the United Nations. When explicitly requested by the General Assembly, it should consider the legal aspects of the reforms already decided upon by the General Assembly with a view to recommending amendments to the Charter of the United Nations. The work carried out by the Special Committee at recent sessions, and the lack of concrete results, pointed to the need to adopt better approaches in order to increase the efficiency of its work, such as strengthening its substantive agenda and ensuring the most efficient use of resources.

12. **Mr. Tag-Eldin** (Egypt) said that the Special Committee played an essential role in strengthening the framework for the peaceful settlement of disputes. In that regard, it was important to maintain the delicate balance between the activities of the principal organs of the United Nations; the Security Council, in particular, should cease to encroach on the competence of the General Assembly and the Economic and Social Council. It was to be hoped that the current negotiations in the General Assembly would lead to an expansion of the Security Council in a manner that addressed the historical injustices to Africa and rebalanced the power structures in the Council. Drastic reform was needed in the Council's working methods in order to enhance transparency and accountability and ensure the participation of States concerned in the Council's deliberations.

13. His delegation reiterated its position that the Security Council should impose sanctions only as a last resort, after all peaceful means had been exhausted. It was of paramount importance not to utilize sanctions to seek political gains, such as regime change. Sanctions should be imposed only for a specific and predetermined period of time and should be lifted automatically if no resolution was adopted for their extension. The Council should pay greater attention to the humanitarian effects of sanctions, particularly on civilians, before imposing them, and should also ensure that there was no effect on neighbouring States and other third parties. It should maintain its neutrality and objectivity in assessing the information used as a basis for imposing sanctions; United Nations representatives on the ground had a delicate role to play in obtaining and assessing the accuracy of such information.

14. His delegation reiterated the importance of the proposal that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council.

15. His delegation called upon the Secretary-General to continue his efforts to complete the preparation of all the volumes of the *Repertoire* and looked forward to the publication of both the *Repertory* and the *Repertoire* on the United Nations website in all the official languages in order to promote better dissemination, particularly in developing countries.

16. His delegation reiterated the importance of the work of the Special Committee in enhancing the General Assembly's role as the central deliberative and policymaking body of the United Nations.

17. **Mr. Nikolaichik** (Belarus) said that in the fast-moving modern world, with its rapid speed of decision-making and of reaction to situations posing a threat to international peace and security, and in the face of increasing questioning of the role of the United Nations, the Special Committee had a special responsibility and must work to increase the effectiveness of the Organization. It should play a central role in respect of the legal aspects of United Nations reform.

18. His delegation believed that sanctions should be imposed only after all other means of peaceful settlement had been exhausted, and their consequences should be carefully considered; they should be clearly defined and must accord with the Charter and other norms of international law. Sanctions should not be applied preventively or in a punitive manner but should be imposed only in cases in which there was a real threat to international peace and security or an act of aggression. They should be of specific duration, should be periodically reviewed and should be lifted as soon as their goals were achieved. Since the imposition of even the most carefully thought-out sanctions inevitably had an adverse effect on third States, often infringing on their rights, including the right to development, mechanisms must be created for the support of such States.

19. Sanctions were not the only instrument for achieving the goals of the Organization; other mechanisms, including the International Court of Justice, had an important role to play. His Government supported the calls for a more effective use of existing procedures and methods for the prevention and peaceful settlement of disputes in accordance with the principles of the Charter.

20. His delegation supported the Venezuelan proposal set out in the annex to document A/65/33; it believed that the Security Council had an essential, but not an exclusive, role in the maintenance of international peace and security. The enhancement of the role of other organs in accordance with their respective mandates would not undermine the Security Council's authority, but was a legitimate stage in the development and democratization of the Organization and would have a positive impact on its effectiveness.

21. His delegation commended the efforts being made to complete the *Repertory* and the *Repertoire*, which would make a significant contribution to strengthening the role of the Organization.

22. The improvement of the Special Committee's working methods should not be confined to procedural aspects and should be undertaken with a view to increasing productivity and the contribution made to strengthening the role of the United Nations. The substantive content of the Special Committee's work should be enhanced while ensuring that there was no overlap with the work of other United Nations bodies. No methods of decision-making should deprive States of the right to make proposals and have them considered by that Committee. The question of the length and periodicity of the Special Committee's sessions should be considered in a flexible manner, taking into account the size of the agenda and the need to ensure the high-quality preparation of reports.

23. **Mr. Shalgham** (Libyan Arab Jamahiriya) expressed the hope that, in imposing sanctions under Article 41 of the Charter of the United Nations, the Security Council would be guided by the important document prepared by the Committee on the subject, which was annexed to General Assembly resolution 64/115. Under no circumstances must sanctions be regarded simply as a means of exerting political pressure or as "punishment", an exceptional tool; they could not be imposed as a preventive or selective measure in the absence of genuine reasons, specific goals and appropriate review mechanisms, nor before all peaceful means had been exhausted.

24. In so complying with the principles and purposes of the Charter, heed must also be paid to Article 50 with respect to assistance to third States damaged by

sanctions. On that score, solid legal principles must be urgently brought to bear and responsibility established for damage caused by any arbitrary application of sanctions giving rise to a rightful claim for just compensation. All delegations were invited to scrutinize the revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1), which had been well supported, with a view to proposals for improvement.

25. As to the functional relationship between the General Assembly, the Economic and Social Council and the Security Council, the Special Committee should devote more attention to its legal aspects. The revised proposal presented by his country with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.99) was pertinent in that regard, as were the further revised working paper submitted by the Cuban delegation on strengthening of the role of the Organization and enhancing its effectiveness (A/AC.182/L.95/Rev.1), the revised working paper submitted by Belarus and the Russian Federation (A/AC.182/L.104/Rev.2), and two new proposals by Ghana and the Bolivarian Republic of Venezuela, details of which were set forth in paragraph 62 of the Special Committee's report. Having been endorsed, those proposals should remain on the Committee's agenda during the coming years, together with the question of the peaceful settlement of disputes, in the interest of promoting their speedy discussion and analysis.

26. The role of the United Nations would not be strengthened by brushing aside the legal matters relating to the strongly advocated reform of the functions and powers of the General Assembly and Security Council. Such reform was necessarily grounded in the truly democratic participation of all States in binding decision-making of the United Nations through its main representative body, the General Assembly. His country's calls for urgent reform to that end had been broadly welcomed, as had all reform proposals, including those set forth in the report of the High-Level Panel on Threats, Challenges and Change, contained in document A/59/565.

27. Nonetheless, bold and historic initiatives were still not forthcoming for a new international system that was fair and balanced. Such a system would restore the status of the General Assembly by including the maintenance of international peace and security within its jurisdiction and making its resolutions binding. The system would also review not only the powers of the Security Council but also its permanent and non-permanent membership with a view to the fair representation of all continents, particularly Africa, in accordance with the common African position articulated in the Ezulwini Consensus. The result would be to end unilateral measures by a State or a group of States, to establish the principles of accountability for all before the General Assembly and to halt practices whereby the General Assembly and its subsidiary bodies, including the Economic and Social Council, overstepped their authority.

28. **Ms. Matapo** (Zambia) said that her delegation was pleased to note from the report of the Secretary-General (A/65/217) that, in keeping with the Security Council's shift from comprehensive economic sanctions to targeted sanctions, there had been no reports concerning the impact of sanctions on third States during the period under review, even though, on many occasions in the past, sanctions had resulted in great suffering in States that were not the intended targets. Zambia had always believed that sanctions should have a clear purpose and be of specific duration, and should be targeted, implemented in a transparent manner and ended once their objective had been achieved. Sanctions regimes must undergo periodic review in order to mitigate their adverse effects on third States; a mechanism should be developed to address special economic problems arising from their application and to take up the question of compensation. The Security Council's authority to impose sanctions must always be in line with the Charter of the United Nations and international law; progress had been made in that regard, but much more could be done.

29. **Mr. Li** Linlin (China) said that the Special Committee had played a positive role in safeguarding the authority of the Charter, maintaining international peace and security and promoting the peaceful settlement of disputes. In recent years, the Security Council had effected a shift towards targeted sanctions, which helped to reduce the negative impact on third States. Given the broad scope of sanctions measures as well as their potential impact on third States, however, it was still of great relevance to establish a mechanism for assessing the impact of sanctions on third States and identifying ways of assisting such States. He

Special Committee should continue to consider the item on a priority basis with a view to achieving results as soon as possible.

30. With respect to the Special Committee's working methods, his delegation was in favour of building on the work done so far and continuing to explore new ideas and methods for improving efficiency. The Special Committee should consider new proposals that were relevant and feasible. His delegation believed that in the absence of a clear mandate from the General Assembly, no new proposal should involve the amendment of the Charter of the United Nations, which could only be considered in an integrated manner and approached within the overall framework of United Nations reform.

31. His delegation appreciated the progress made by the Secretariat in compiling the *Repertory* and the *Repertoire*; his Government was considering making a contribution to the trust fund in 2011, and hoped that the Secretariat would make further efforts to ensure the synchronized publication of the two compilations in all the official languages.

32. **Ms. Taratukhina** (Russian Federation) said that her delegation supported the work of the Special Committee, which had a solid record of achievement. Since its mandate was quite broad, the Special Committee would be able to address the broad range of issues which might arise at the legal level in relation to the Charter. A central topic was the Russian-Belarusian proposal regarding the legal consequences of the use of force by States without prior Security Council authorization. An advisory opinion from the International Court of Justice would clarify the obligation to refer to the Security Council issues involving the use of force in response to threats to peace and security. Her delegation took note of the report of the Secretary-General (A/65/217), in particular with regard to strengthening the capacity of the Department of Economic and Social Affairs to react appropriately to any requests for assistance it might receive from third States. She stressed the importance of the work on the *Repertory* and the *Repertoire* and noted that, in respect of the *Repertoire*, there were clear rules and standards for its preparation which must be strictly followed by the Secretariat.

33. **Mr. Delgado Sánchez** (Cuba) said that his Government attached great importance to the work of the Special Committee, which was the appropriate framework for negotiating any amendments to the Charter emanating from the current United Nations reform process. It was essential to pursue true reform that would lead to democratization of the Organization. It was also essential to ensure that United Nations organs acted in accordance with the Charter, to preserve and strengthen the leadership of the General Assembly and to curb the negative trend towards inclusion on the Security Council's agenda of matters that clearly went beyond its mandate. The Special Committee might serve as a permanent oversight body, ensuring that both Member States and the principal organs of the United Nations complied strictly with the provisions of the Charter and that the latter did not overstep their mandates.

34. Some States had once again shown a lack of political will to support the Special Committee's work. It was interesting that the delegations calling for the Special Committee to meet biennially, citing its failure to produce adequate results, were the same delegations that were hindering the achievement of consensus on the substantive items on its agenda and opposing the inclusion of new items. That was unacceptable. In accordance with General Assembly resolution 3499 (XXX), it was a sovereign right of States to submit proposals to the General Assembly and its various committees.

35. His delegation welcomed the new proposals submitted in the current year and affirmed its commitment and willingness to work to achieve outcomes that would strengthen the General Assembly. The proposals under consideration were of great importance. A legal regime governing all aspects of the imposition of sanctions was urgently needed. Sanctions should be imposed only after all means of peaceful settlement had been exhausted and their short- and long-term effects had been thoroughly considered. They should not be applied "preventively" in instances of mere violation of international law and should be imposed only when there existed a threat to international peace and security or an act of aggression. A system for compensating target and third States affected by unlawfully imposed sanctions should be put in place.

36. His delegation appreciated the efforts made to update the *Repertory* and *Repertoire* and urged that that work be continued and concluded.

37. **Mr. Ayoob** (Afghanistan) said that the Special Committee continued to play a constructive role in the

maintenance of international peace and security and in advancing United Nations reform, which must be carried out in accordance with the principles and procedures established by the Charter. The Special Committee could contribute to the examination of legal matters in the reform process and to the democratization of the Organization's principal organs. His Government supported full implementation of the Special Committee's mandate and stressed the need to further improve its working methods.

38. His Government also strongly supported the central role of the United Nations as a universal forum for addressing all global issues relating to international cooperation, peace and security, economic development and social progress, human rights and the rule of law. The peaceful settlement of disputes remained one of the essential purposes of the United Nations and was the most efficient means of maintaining international peace and security and strengthening the rule of law in international relations. His Government also recognized the important role of judicial mechanisms, including the International Court of Justice, for the prevention and settlement of disputes among States.

39. Sanctions remained an important tool for maintaining and restoring international peace and security, but they had to be carefully focused and targeted in accordance with the Charter. They also had to have clear objectives and be implemented in ways that balanced effectiveness in achieving desired results against possible adverse consequences for civilian populations and third States. Sanctions should be a measure of last resort and should have a specified time frame and be subject to periodic review. His delegation supported the provisions of relevant General Assembly resolutions addressing the issue of assistance to third States affected by sanctions and called for further measures to improve the procedures and working methods of the Security Council in relation to sanctions. It welcomed the shift from comprehensive economic sanctions to targeted sanctions and the absence of reports from third States of special economic problems arising from the implementation of sanctions.

40. His Government was working closely with the Security Council Committee established pursuant to resolution 1267 (1999) on the listing and de-listing of individuals and entities subject to sanctions. It welcomed the de-listing of some former members of the Taliban and underscored the need for fair and clear procedures in respect of the Consolidated List maintained by the 1267 Committee. The Committee should continue to study all individuals and entities on the list carefully. Afghanistan was fully committed to implementing its obligations under resolution 1267 (1999) and called on all States to do likewise.

41. The *Repertory* and *Repertoire* had made a valuable contribution to the institutional memory of the international system. His delegation appreciated the Secretariat's work in updating them and supported the call for continued voluntary contributions to the trust fund for the elimination of the backlog in the *Repertory*.

42. **Ms. Ahmad Tajuddin** (Malaysia) said that a clear mechanism was needed to deal with the long-standing issues that remained on the Special Committee's agenda and expressed support for the idea of conducting an overall review of the Special Committee's working methods aimed at increasing its productivity through, inter alia, the adoption of a decision-making procedure. The matter should be discussed by the Sixth Committee, however, before any decision was taken. As to the new items proposed for inclusion on the Special Committee's agenda, a study of the complexities of the issues should first be undertaken. Any new proposals that envisaged amendments to the Charter should be considered in the overall context of United Nations reform.

43. Her delegation welcomed the improvements in the United Nations sanctions regime aimed at addressing the effects of sanctions on third States but was of the view that the scarcity of reports by third States of adverse effects should not lead to a generalized assumption that targeted sanctions caused no such effects. At the very least they would affect bilateral trade and diplomatic relations. If such adverse effects in turn compromised the economic well-being of a third State, it would undermine that State's full commitment and ability to implement the Security Council sanctions regime effectively. The Special Committee should therefore continue its work on the issue, as mandated under paragraph 4 of General Assembly resolution 64/115. As to the proposal put forward by the Libyan Arab Jamahiriya in its revised working paper of 2002, action should be taken only after the provisions of the Charter and principles of international law had been duly considered.

44. Her Government supported and practised the peaceful settlement of disputes. It acknowledged the

role of the International Court of Justice in that regard and appreciated the Court's adherence to its prescribed mandates, which would increase Member States' confidence in it and enhance its ability to serve its purposes. Other forums could also facilitate the satisfactory resolution of disputes, however.

45. Her delegation welcomed the significant progress made in compiling the *Repertory* and updating the *Repertoire* and noted the call for voluntary contributions to the trust funds for the two publications.

46. **Mr. Johnson** (United States of America) said that the issue of the Special Committee's efficiency was crucial. The Special Committee should continue to seek ways of improving its productivity throughout its sessions. His delegation was of the view that many of the long-standing proposals before the Special Committee had been addressed elsewhere in the United Nations and was therefore cautious about adding any new items to its agenda at the present time. Any new items that were eventually added should be practical and non-political, and should not duplicate work under way elsewhere in the United Nations system. The Special Committee was most useful when it considered proposals that were clear and realistic and that took into account the appropriate role of the various United Nations organs. His delegation was therefore not convinced that the topics proposed by Ghana and the Bolivarian Republic of Venezuela were appropriate for inclusion on its agenda.

47. With regard to the agenda items concerning international peace and security, the Special Committee should not pursue activities that would duplicate or be inconsistent with the roles of the principal organs of the United Nations as set forth in the Charter, including activities relating to sanctions. It would, for example, be inappropriate for the Special Committee to devise norms concerning the design and implementation of sanctions. Positive developments had occurred elsewhere in the United Nations aimed at ensuring that the system of targeted sanctions remained a robust tool for combating threats to international peace and security, and as noted by the Secretary-General in his report on the matter (A/65/217), during the most recent reporting period no reports had been received from third States of special economic problems arising from the implementation of sanctions.

48. His Government did not support the proposal that the General Assembly should request an advisory opinion from the International Court of Justice on the use of force. His delegation welcomed, however, the ongoing efforts to reduce the backlog in the preparation of the *Repertory* and *Repertoire*, which provided useful resources on the practice of United Nations organs.

49. **Mr. Valero Briceño** (Bolivarian Republic of Venezuela) said that his delegation appreciated the Special Committee's work and supported the continuation of its activities. Reform and democratization of the United Nations was, in his view, the most important matter under consideration within the Special Committee. He called for the reform of the Security Council, including immediate expansion of its membership, with representation from Africa, Asia and Latin America and the Caribbean, and for elimination of the anti-democratic privileges arising from use of the power of veto by some States. His delegation also called for restoration to the General Assembly of the functions being usurped by the Security Council and advocated direct and universal participation by all countries, on an equal footing, in the selection of the Secretary-General. The General Assembly was the supreme and most representative of the United Nations organs and should therefore be the main forum for the treatment of fundamental issues of global importance and the source of the principal policies and decisions emanating from the Organization.

50. His delegation reiterated its long-held position that sanctions should be imposed only in extreme situations, after all other options had been exhausted and in conformity with the provisions of the Charter and international law. They should not be imposed indefinitely and their aim should never be to unseat the legitimate authorities of a State. Sanctions regimes should be applied in accordance with the annex to General Assembly resolution 64/115. His delegation also wished to highlight the duty of Member States under the Charter to settle international disputes by peaceful means and to underscore the importance of the principle of free choice with respect to the means of dispute resolution. The Organization should strengthen its capacity to prevent disputes.

51. The *Repertory* and *Repertoire* were instruments of great utility for research and preservation of the institutional memory of the Organization. His delegation hoped to see speedy completion of the work on volume III of the various supplements to the *Repertory* which had been pending for several years.

52. **Mr. Al Habib** (Islamic Republic of Iran), speaking in the representative of the Islamic Republic of Iran, said that the Special Committee had made important contributions to promoting the purposes and principles of the United Nations. Under international law, States had an obligation to refrain from the threat or use of force against the territorial integrity or political independence of other States and to settle their disputes by peaceful means. It was therefore a matter of serious concern that some States continued to rely on the unlawful use or threat of force in order to advance their interests, thereby endangering international peace and security and undermining the fundamental principles of the United Nations and international law. The Special Committee had an important role to play in addressing that concern, and his delegation supported serious consideration of all proposals on its agenda relating to the maintenance of international peace and security.

53. Sanctions, as a coercive measure, could be employed only after the Security Council had determined, on the basis of valid evidence and not mere speculation and misinformation, that an actual threat to peace or an act of aggression existed, and only when peaceful measures had been exhausted or proved to be inadequate. In so doing, it must not exceed its authority and must act in strict conformity with the Charter and international law. The Security Council could not deprive a Member State of its legitimate rights as recognized under international law, nor could it deem a lawful and legitimate act by a State to be a threat to international peace and security. Member States were required to comply with the Security Council's decisions only if they were in accordance with the Charter.

54. As the International Criminal Tribunal for the Former Yugoslavia had affirmed in the *Tadic* case, the Council was not *legibus solutus* (unbound by law) and its discretion in determining whether a dispute constituted a threat to international peace and security was not totally unfettered. The Security Council should be held accountable for the consequences of sanctions imposed for unlawful objectives or introduced as the result of political pressure or influence of some permanent members.

55. Member States that took undue advantage of their membership on the Council by imposing unlawful sanctions against other States bore international responsibility for an internationally wrongful act of the Organization. In such cases, the targeted States should be compensated for damages inflicted upon them. The International Law Commission should give due consideration to the legal consequences of arbitrarily imposed sanctions under the topic "Responsibility of international organizations".

56. The imposition of arbitrary and unilateral economic sanctions against developing countries as an instrument of foreign policy not only defied the rule of law at the international level but also infringed upon the right to development and led to violations of basic human rights. Such unilateral coercive measures clearly contravened international law and the Charter of the United Nations, especially where they were aimed at depriving nations of their lawful and legitimate rights under treaties.

57. The General Assembly should be able to exercise its mandate in addressing issues relating to the maintenance of international peace and security without any interference. The continuing encroachment by the Security Council on the functions and powers of the General Assembly was cause for concern. The fact that a situation or dispute had been considered before another organ of the United Nations, in particular the Security Council, was not a legal impediment for the General Assembly to consider the same situation or dispute.

58. His delegation welcomed the progress made in updating the *Repertory* and *Repertoire*, but noted that no progress had been made on volume III of several supplements. Volume III covered some very important parts of the Charter, and further effort on the part of the Secretariat was therefore required to eliminate the backlog.

59. **Mr. Hadi** (South Africa) said that the Special Committee had failed to live up to its potential to make a significant contribution to the work of the United Nations and to the development and enhancement of international law. Although it had adopted the document entitled "Introduction and implementation of sanctions imposed by the United Nations", it had done so not as part of the resolution on the work of the Special Committee, but only as an annex thereto. The failure to live up to its potential was not owing to a lack of capability within the Special Committee or to a lack of interesting or relevant topics for discussion. His delegation felt that the Special Committee could have addressed some of the topics which had been proposed

by some delegations. They included the maintenance of international peace and security, proposed by the Libyan Arab Jamahiriya, and the Belarusian and Russian proposal that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without authorization by the Security Council. He hoped that progress would be made on the topic of the advisory opinion at the current session.

60. His delegation welcomed in particular the topic "Principles and practical measures for strengthening and ensuring more effective cooperation between the United Nations and regional organizations". Given the growing significance of regional organizations in international law, it was important to elaborate principles for enhancing cooperation between those organizations and the United Nations. It was also important to establish the precise legal contours governing the relationship between the Security Council's power under Chapter VII of the Charter and the right of the African Union to intervene in a Member State pursuant to a decision of the African Union Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity, contained in article 4 (h) of its Constitutive Act. By dealing with that topic expeditiously and comprehensively, the Special Committee would make a significant contribution towards improving the international community's ability to restore and maintain international peace and order.

61. Lastly, the credibility of the United Nations would continue to suffer as long as the Security Council remained undemocratic and unrepresentative. In that connection, his delegation reiterated its call for urgent reform of the Security Council, including through expansion of both its permanent and its non-permanent membership.

62. **Mr. Yun** Yong Il (Democratic People's Republic of Korea) said that double standards and inequality were becoming ever more serious in international relations, and the United Nations was being ignored or even abused owing to heavy-handedness and arbitrariness in the use of force and the imposition of sanctions. It was critical for Member States to adhere to the purposes and principles of the Charter, otherwise it would be difficult for international issues to be settled fairly, for the common benefit of all Member States.

63. Continued encroachment by the Security Council into issues entrusted to the General Assembly and the Economic and Social Council not only undermined the authority of the General Assembly, but also upset the balance among principal organs of the United Nations. In that regard, the authority of the General Assembly should be enhanced so that Security Council resolutions related to peace and security, particularly those concerning sanctions and the use of force, could not take effect without the approval of the General Assembly. At the same time, the United Nations should dissociate itself from the actions of certain States which abused its name in pursuit of their sinister political and military objectives.

64. On the issue of national reconciliation and peace on the Korean peninsula, in January 2010 his Government had proposed to the parties to the Armistice Agreement of 27 July 1953 to start talks with a view to replacing that Agreement with a peace treaty on the 60th anniversary of the outbreak of the Korean War. That proposal was aimed at achieving a breakthrough for peace and security in the region and creating a peaceful environment for economic development.

65. The United Nations Command in the Republic of Korea was a major stumbling block in the effort to establish a ceasefire and durable peace and to put an end to the cold war on the Korean peninsula. It was only fuelling tensions and conflict instead of fulfilling its peacekeeping mission as a buffer between the three parties to the dispute. His delegation wished to remind the United Nations of its historical responsibility for being unjustifiably used in the division of Korea, in the Korean War of 1950, and in the current cold war on the Korean peninsula. The United Nations Command should therefore be dismantled as called for in General Assembly resolution 3390 (XXX).

66. **Mr. Appreku** (Ghana) said that the guidelines and practices underpinning the partnership, cooperation and coordination between the United Nations and regional and subregional organizations were not always consistent with Chapter VIII and to some extent Chapter VI of the Charter. Consequently, clearer principles and practical measures should be elaborated to make optimum use of the comparative advantages of both the United Nations and the regional organizations. Those measures would also strengthen the capacities of regional cooperation mechanisms and enhance the regional capacities of the United Nations. Indeed, in 1992, when the Security Council called on the Secretary-General to submit a report on the role which

regional organizations could play in strengthening the purposes of the United Nations, the goal had been not just to assist those organizations but also to engage them in the ultimate goal of advancing the work of the United Nations itself and contributing to the maintenance of peace and security. Along with the General Assembly, the Security Council and the Economic and Social Council, regional organizations were identified as one of the pillars for strengthening the United Nations. To that end, consultations and cooperation between the United Nations and regional organizations would be expanded through formalized agreements and, where appropriate, regional organizations could also participate in the work of the Security Council, in order to improve their ability to prevent armed conflicts and to strengthen cooperation in the economic, social and cultural fields.

67. **Mr. Beg** (India) said that while the Security Council was primarily responsible for imposing and enforcing sanctions in accordance with Chapter VII of the Charter, such action should not adversely affect other States, entities or people. His delegation was happy to note that the Security Council was giving due consideration to Article 50 of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII, having made the shift from general and comprehensive sanctions against States to targeted sanctions against individuals and entities, especially in the global effort to combat terrorism. It had also adopted both substantive and procedural safeguards to mitigate the adverse effects of sanctions on third States.

68. The proper implementation of targeted financial sanctions, focused arms embargoes and travel sanctions would minimize the economic, social and humanitarian impact of sanctions on States. The effectiveness of sanctions could only be reinforced and made more acceptable if permanent and predictable solutions were found to the problem of third States affected by the application of sanctions. In that connection, his delegation was pleased to note from the Secretary-General's report (A/65/33) that none of the sanctions committees had been approached by Member States concerning special economic problems arising from the implementation of sanctions since 2003. His delegation welcomed the efforts by the Secretariat to compile and evaluate information pertaining to the impact of sanctions.

69. The duty to settle disputes by peaceful means was a fundamental principle enshrined in the Charter, with the International Court of Justice having an important role to play in that regard. His country attached great importance to United Nations reform as a way of strengthening the Organization, including through the revitalization of the General Assembly and democratization of the Security Council and expansion of both its permanent and its non-permanent membership.

70. Lastly, his delegation noted with satisfaction the progress made by the Secretariat in preparing, updating and publishing the *Repertory* and *Repertoire*, both valuable sources of information on the application of the Charter and the practice of United Nations organs and the Security Council.

71. **Mr. Park** Chull-joo (Republic of Korea), speaking in exercise of the right of reply, said that Security Council resolutions 84 (1950) and 88 (1950), which had been adopted according to all legal procedures of the Security Council, officially recognized the United Nations Command as the entity responsible for maintaining peace on the Korean peninsula. With regard to the General Assembly resolution mentioned by the representative of the Democratic People's Republic of Korea, on 18 November 1975, the General Assembly had adopted resolution 3390 (XXX) on the question of Korea in two parts — (A) and (B). It was therefore misleading to read one of those two parts out of context.

72. With respect to the peace regime on the Korean peninsula, his delegation held the view that a lasting peace agreement should be negotiated by the relevant parties at an appropriate forum outside the United Nations, as provided in the joint statement adopted following the six-party talks on 19 September 2005. The Special Committee was therefore not the appropriate forum for discussing the United Nations Command and the Korean peace treaty.

73. **Mr. Yun** Yong Il (Democratic People's Republic of Korea), speaking in exercise of the right of reply, said that the so-called "United Nations Command" in South Korea had no legal basis. Although the South Korean delegation claimed that the "United Nations Command" had been set up in accordance with Security Council resolution 84 (1950), that resolution had been cooked up in the Security Council in the absence of the former Union of Soviet Socialist Republics, a permanent member of the Security Council.

74. Article 27, paragraph 3, of the Charter of the United Nations stipulated that "decisions of the Security Council on all other matters shall be made by

an affirmative vote of nine members including the concurring votes of the permanent members". In fact, that resolution had not only been illegal, but had only recommended that Member States providing military forces and other assistance make such forces and other assistance available to a unified command under the United States of America. Nonetheless, the United States arbitrarily called that unified command the "United Nations Command", thereby abusing the name of the United Nations. The "United Nations Command" itself did not comply with many provisions of the Charter and was structurally, administratively and financially unrelated to the Organization. If the existence of the "United Nations Command" was accepted, that would mean that the United Nations would technically be pointing a gun at one of its own Member States, an abnormal situation which should be addressed immediately.

75. With regard to the contents of General Assembly resolution 3390 (XXX), in principle, both parts A and B of the resolution had called for the dissolution of the "United Nations Command" in South Korea. The resolution had expressed the further hope that the "United Nations Command" might be dissolved and that no foreign troops would remain in South Korea. It had been hoped that the North and the South would promote their dialogue to accelerate the reunification of the country in accordance with the spirit of the joint statement of 4 July 1974. Furthermore, North and South Korea had a common programme for the reunification of the peninsula, as stipulated in the joint declaration of 15 June 2000 and the joint declaration of 4 October 2007, signed by the leaders of both sides. The thrust of those declarations had been to have the Korean nation resolve its reunification issue by itself. The Korean nation was one nation and the Korean peninsula had been divided into two by foreign forces. Such national division, which had lasted more than 65 years should not be allowed to continue. To that end, it was necessary to create an environment in which his nation could decide its national affairs by itself without foreign intervention.

76. He urged delegations to pay close attention to the reality of the Korean peninsula and to help the Korean nation to be free from foreign interference by dismantling the United Nations Command.

77. **Mr. Park** Chull-joo (Republic of Korea), speaking in exercise of the right of reply, stressed that the United Nations Command had been established by the relevant Security Council resolution in accordance with all legal procedures. The peace treaty on the Korean peninsula should be discussed directly between the parties concerned, namely South and North Korea, which had primary responsibility for defending peace on the peninsula. The joint statement following the six-party talks in 2005 also reflected the same spirit. However, resolution of the nuclear issue in North Korea was a necessity for bringing about peace on the peninsula. Accordingly, it was of foremost importance for the Democratic People's Republic of Korea to come to the negotiating table with genuine intentions with regard to its denuclearization. Lastly, his delegation felt that the Special Committee was not the appropriate forum for discussing the United Nations Command and the Korean peace treaty.

78. **Mr. Yun** Yong Il (Democratic People's Republic of Korea) said that the Special Committee was indeed the forum for discussing legal aspects of the United Nations, including the misuse of the Organization's name by certain States. With regard to the peace treaty, South Korea had not been party to the Armistice Agreement of 27 July 1953 and, as such, was in no position to talk about the peace treaty. He urged the South Korean delegation to implement the two joint declarations so that the Korean nation could undertake its reunification by itself.

The meeting rose at 5.20 p.m.